Filed 5/31/16 Marriage of Paclik CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of CHARLES T. PACLIK and JENNY C. PACLIK.	
CHARLES T. PACLIK, Appellant, v. JENNY C. PACLIK, Respondent.	A146243 (Contra Costa County Super. Ct. No. MSF08-00312)

Charles T. Paclik (appellant) appeals from a ruling on his requests for disability accommodations under the Americans with Disabilities Act of 1990 (ADA), Title 42 United States Code section 12101 et seq. The appeal fails because it is taken from a nonappealable order. A party aggrieved by a ruling on a disability accommodation request may seek appellate review of the ruling either by petitioning for immediate writ review (Cal. Rules of Court,[1] rule 1.100(g)(2)) or in an appeal from a subsequent appealable order or judgment. But a ruling on a request for a disability accommodation is not separately appealable. Accordingly, we shall dismiss the appeal.

PROCEDURAL BACKGROUND

Appellant filed a petition in Illinois in 2005 seeking to dissolve his marriage to respondent Jenny C. Paclik. (*In re Marriage of Paclik* (Ill.Dist.Ct.App. 2007)

[1]Further rule references are to the California Rules of Court.

864 N.E.2d 274, 276.) The case found its way to California in 2008, when an out-of-state support order was registered in Contra Costa County Superior Court.

In August 2015, respondent sought ex parte relief to modify child custody and visitation orders. The court set the matter for hearing on August 31.[2]

In an August 24 request for accommodation of disabilities submitted to the trial court, appellant included an attachment that listed a variety of "ongoing," "specific," and "special" accommodation requests. As ongoing accommodations, appellant requested that the court use proper etiquette in dealing with him, refrain from violating state and federal law, protect him from respondent, afford him the right to refuse to respond to discovery requests, and maintain his disability accommodation requests in confidence. As a specific accommodation, appellant sought a 90-day continuance. Appellant also requested what he characterized as a special accommodation consisting of transferring the case to a forum more convenient to him where he could appear in person instead of telephonically.

The court manager responded to appellant's disability accommodation requests in an August 28 letter. The court manager granted the request to maintain appellant's disability accommodation requests in confidence except to the extent that persons involved in the accommodation process may have a right to review them pursuant to *Vesco v. Superior Court* (2013) 221 Cal.App.4th 275 (*Vesco*). The court manager otherwise denied or failed to specifically address each of the remaining accommodation requests, except the request for a continuance. The court manager stated that the court would need to conduct a hearing on August 31 pursuant to *Vesco* in order to consider whether to grant a continuance as an accommodation for appellant's claimed disability.[3]

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[2]All dates to which we refer fall within calendar year 2015 unless otherwise specified.

[3]In *Vesco*, *supra*, 221 Cal.App.4th 275, the court held that a person who opposes a continuance sought as a disability accommodation is a person "involved in the accommodation process" for purposes of the rule of court specifying the procedure for requesting reasonable accommodations for disabilities. (*Id.* at p. 277; see generally Cal. Rules of Court, rule 1.100.) As such, a person opposing a continuance "has the right

The court conducted a contested hearing on August 31 to consider appellant's request for a continuance. The court referred to the matter as a "*Vesco* hearing" at which respondent was given notice and an opportunity to be heard on appellant's request for a continuance, as well as the right to receive any documentation appellant intended to present in support of his disability accommodation request. Following the hearing, the court granted appellant's request for a 90-day continuance and maintained in place orders previously entered.

On September 8, appellant filed a notice of appeal challenging the "[j]udgment after VESCO hearing" entered on August 31.

DISCUSSION

Persons with disabilities are allowed to apply to the court for reasonable accommodations "to ensure full and equal access to the judicial system." (*Vesco, supra*, 221 Cal.App.4th at p. 279; see rule 1.100(b).) Rule 1.100 specifies the procedures for requesting accommodations, ruling upon such requests, and reviewing rulings.

As relevant here, rule 1.100 provides that requests for accommodations may be presented ex parte by the applicant and must be forwarded to the court's ADA coordinator or designee. (Rule 1.100(c)(1).) If a decision to grant or deny a request for accommodation is made by nonjudicial court personnel, "an applicant or any participant in the proceeding" may request that the court's presiding judge or designated judicial officer review the decision. (Rule 1.100(g)(1).) A request for judicial review must be submitted to the court within 10 days after the decision was sent or personally delivered. (*Ibid.*) If a decision to grant or deny a request for accommodation is made by a judicial officer, "an applicant or any participant in the proceeding may file a petition for a writ of mandate . . . in the appropriate reviewing court." (Rule 1.100(g)(2).) The petition must be filed within 10 days of the date the court's ruling was sent or delivered in person to the petitioner. (*Ibid.*)

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to notice, to view the documents on which the [applicant] relies, and to an opportunity to be heard." (*Vesco*, at p. 227.)

As an initial matter, appellant has no standing to challenge the court's order, which *granted* his request for a 90-day continuance. In order to have standing to appeal, a party must be aggrieved by the challenged order or judgment. (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947.) The standing rule is jurisdictional. (*Ibid.*) When a party such as appellant prevails on the only matters presented to the trial court, that party is obviously not aggrieved by the court's decision. Appellant objects to the denial of various requested accommodations, such as his request for a change of venue, but there is no indication in the record that appellant ever sought a ruling from the trial court on these requests. Instead, they were the subject of a determination by the court manager, a nonjudicial court employee. Rule 1.100(g)(1) requires a person aggrieved by a nonjudicial court employee's determination of an accommodation request to timely seek review by an appropriate judicial officer in the court where the accommodation is sought. Under rule 1.100, a determination by a judicial officer on a request for a disability accommodation is a predicate to seeking review in a higher court. (See rule 1.100(g)(2).) In this case, the only disability accommodation request presented to the judge for decision was appellant's request for a continuance, which was granted. Because the court granted appellant the relief he requested on the only accommodation request submitted to the judge for consideration, appellant is not legally aggrieved by the court's order.

The appeal suffers from an even more fundamental problem, however, because a ruling on a disability accommodation request is not an appealable order. (See Civ. Proc., § 904.1 [listing appealable judgments and orders].) The right to appeal is statutory, and " 'a judgment or order is not appealable unless expressly made so by statute.' " (*People v. Mazurette* (2001) 24 Cal.4th 789, 792.) We have no choice but to dismiss an appeal taken from a nonappealable order. (See *Garau v. Torrance Unified School Dist.* (2006) 137 Cal.App.4th 192, 202.)

Appellant seems to believe that his appeal is authorized as a petition for a writ of administrative mandate under Code of Civil Procedure section 1094.5. He is mistaken. Section 1094.5 of the Code of Civil Procedure governs judicial review of any final decision of an administrative agency. (*Wences v. City of Los Angeles* (2009) 177

Cal.App.4th 305, 313.) That section does not apply to a challenge to a judicial decision to grant or deny a disability accommodation request.

In some cases, a final order that is collateral to the subject of the litigation is considered directly appealable under the "collateral order doctrine" even if it is not expressly made appealable by statute. (See *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 561.) This principle is inapplicable here. "To qualify as an appealable order under the collateral order doctrine, the interlocutory order must (1) be a final determination (2) of a collateral matter (3) and direct the payment of money or performance of an act." (*Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1016.) While a ruling on a disability accommodation request may be considered a final determination, it is not necessarily collateral to the subject matter of the litigation. For example, in this case the court granted a continuance as an accommodation to appellant. The effect of the continuance was to delay resolution of respondent's requested change in child custody and visitation orders. That delay necessarily affects the parties' substantive rights in that it maintains in place orders that are at the heart of the parties' dispute. In any event, regardless of whether a particular disability accommodation might be characterized as collateral to the litigation, a ruling on an accommodation request does not satisfy the third prong of the collateral order doctrine in that it does not direct the payment of money or the performance of an act.

A party aggrieved by a ruling on a disability accommodation request is not left without a remedy. As set forth in rule 1.100(g)(2), an applicant or any participant in the proceeding "may file a petition for a writ of mandate" in an appropriate reviewing court within 10 days of the date the court's determination was "delivered in person or sent to the petitioner." Further, nothing in rule 1.100(g)(2) suggests that writ review is the exclusive appellate remedy. The rule simply provides that an aggrieved applicant or participant "may" seek immediate writ review. (Compare rule 1.100(g)(2) with Code Civ. Proc., § 405.39 [specifying that order expunging lis pendens is not appealable and may only be challenged by writ petition]; but see *Garau v. Torrance Unified School Dist., supra,* 137 Cal.App.4th at pp. 198–199 [even though statute specified that party

"may" petition a reviewing court for writ relief, writ review was exclusive appellate remedy in light of statutory scheme and legislative history].)

As an intermediate ruling or order that substantially affects the rights of a party, a ruling on a disability accommodation request is subject to review from a subsequent appealable judgment or order. (Code Civ. Proc., § 906; see *Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 648–649.) Indeed, in a number of reported decisions California courts have considered the propriety of a court's disposition of a disability accommodation request in an appeal from a subsequent order. (See *Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 706–712 [merits of accommodation request considered in conjunction with appeal from judgment]; *In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1272–1278 [same].)

In this case, appellant did not pursue either of the two avenues for appellate review of a ruling on a disability accommodation request. First, he did not file a timely petition for a writ of mandate under rules 8.485 to 8.493, as rule 1.100(g)(2) requires in the case of petition presented to a Court of Appeal. Instead, he filed a notice of appeal. Second, his appeal is not from an appealable order or judgment entered after the ruling on his disability accommodation request. Rather, the appeal is from the ruling on the disability accommodation request itself, which is not separately appealable. Under the circumstances, we are compelled to dismiss the appeal.

DISPOSITION

The appeal is dismissed. Each party shall bear its own costs on appeal.

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McGuiness, P.J.

We concur:

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Siggins, J.

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Jenkins, J.

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